

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

UNITED STATES OF AMERICA

VS.

CRIMINAL NO. 1:05cr31 KS-RHW-1

CLEM ORLANDO PRICE

ORDER

This cause is before the Court on Motion filed pursuant to 28 U.S.C. § 2255 to vacate, set aside or correct sentence by a person in federal custody [21] filed by Clem Orlando Price (Movant). In the Motion, Movant alleges that he went to trial and was convicted when, in fact, he entered a plea of guilty and was sentenced in conformity with a plea bargain agreement reached with the Government. It is noted that Movant was sentenced November 10, 2005. On May 26, 2009, by Motion [18], Movant requested retroactive application of the Sentencing Guidelines for crack cocaine offenses.

On June 18, 2009, an Order was entered denying said relief [19].

Almost seven years later this Motion to Vacate was filed. Movant also alleges that he falls under the ruling in *Johnson v. US*, 135 S.Ct. 2551, 83 USLW 4576 and claims that he is entitled to be resentenced based on a change in the law.

The Court finds as follows:

That this district has established a procedure to investigate all criminal defendants who have been sentenced and have issues that could be affected by the *Johnson* decision. A committee consisting of representatives of the U.S. Probation Office, the Public Defender and

the U.S. Attorney's Office are reviewing cases to determine whether affected inmates should be resentenced. Movant herein will be considered in due course and within the Statute of Limitations if he is eligible.

The Court finds that Movant did not have his sentence in any way enhanced by the Armed Career Criminal Act and therefore *Johnson* is irrelevant.

For the reasons stated, the Court finds that this Motion should be and is hereby denied.

SO ORDERED this the 31st day of May, 2016.

s/ Keith Starrett
UNITED STATES DISTRICT JUDGE